-954 BEST COPY

JAN 3 1973

MICHAEL RODAK, JR., CLERK

No.

In the

Supreme Court of the United States

OCTOBER TERM, 1972

72-954

PEOPLE OF THE STATE OF ILLINOIS EX REL. VILLAGE OF LAKE BLUFF, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, AND THE VILLAGE OF LAKE BLUFF,

Petitioners,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

BOARD OF EDUCATION, SCHOOL DISTRICT NO. 65, LAKE COUNTY, ILLINOIS,

Intervenors,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

LONCHAR AND NORDIGIAN
33 North County Street
Waukegan, Illinois 60085
Attorneys for Petitioners

PETER J. NORDIGIAN
STEPHEN H. KATZ
Of Counsel

The Scheffer Press, Inc., 118 South Clinton Street, Chicago, Illinois

INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statement	3
Reasons for Granting the Writ	5
Conclusion	14
Appendix A Opinion (71-129)	1a
Appendix B	9a
Appendix C	13a
Appendix D	14a
Appendix E	15a

CITATIONS

CASES

City of Sugar Creek v. Standard Oil Co., 163 F2d 320 (1947)	8
Howard v. Commissioners of the Sinking Fund of the City of Louisville, 344 U.S. 624, 73 S. Ct. 465, 97 L. Ed. 617 (1953)	8
Myles Salt Co. v. Board of Commissioners, 239 U.S. 478, 36 S. Ct. 204 (1916)	8
People v. Village of Streamwood, 15 Ill. 2d 595, 155 NE 2d 635 (1959)	9
U. S. v. City of Bellevue, Nebraska, 334 F 861 (1971)	8

STATUTES

PAGE

Illinois Annexation Statute, Chapter 24, Section 7-1-8 9

Illinois Annexation Statute, Chapter 24, Section 7-1-13 ..... 9, 13

Illinois Annexation Statute, Chapter 24, Section 7-36 (1957), 7-1-42 (1971) 5

Illinois Election Law, Chapter 46, Section 3-1 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No.

PEOPLE OF THE STATE OF ILLINOIS EX REL. VILLAGE OF LAKE BLUFF, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, AND THE VILLAGE OF LAKE BLUFF,

Petitioners,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

BOARD OF EDUCATION, SCHOOL DISTRICT NO. 65, LAKE COUNTY, ILLINOIS,

Intervenors,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

Petitioners pray that a Writ of Certiorari issue to review the respective orders and judgments of the Supreme Court of Illinois which was entered and which denied Petitioners leave to appeal from the Appellate Court of Illinois, Second District; from the opinion and judgment rendered by the Appellate Court of Illinois entered on

April 3, 1972, and the denial of a rehearing thereon denied June 7, 1972; and from the orders of the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, entered on July 17, 1970 and February 24, 1971 denying Petitioner any right to file a Complaint in the nature of Quo Warranto.

OPINION BELOW

The opinion of the Appellate Court of Illinois, Second District was entered on April 3, 1972. The Petition for Leave to Appeal to the Supreme Court of Illinois was denied and the mandate issued October 20, 1972.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3). Questions under the United States Constitution sought to be reviewed by this Court were timely and properly raised in the Court below.

QUESTIONS PRESENTED

1. Whether the Illinois Courts by denying the Petition and Amended Petition for Leave to File a Complaint in Quo Warranto, precluded Petitioner from raising important questions regarding the right of residents of the military reservation to vote and to be represented in the municipal Government, contrary to the due process clause of the Fourteenth Amendment of the U.S. Constitution.

2. Whether the annexation of Forrestal Village was unreasonable and contrary to the due process clause of the U.S. Constitution since the City of North Chicago merely views the Federal military reservation as a source of revenue and provides it with no municipal services.

3. Whether the annexation of the U.S. Naval reservation was accomplished in violation of Illinois Statutes and,

therefore, was contrary to due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

STATEMENT

On August 12, 1968, the City of North Chicago annexed a ten acre parcel of land known as the Doney property. Lying between the City of North Chicago and the Doney property was and still is approximately 100 acres of United States Navy military reservation; this portion of the Federal reservation is used for housing Navy personnel, and is commonly known as the Forrestal Village. The City of North Chicago claims to have annexed Forrestal Village as well. That latter annexation took place on April 28, 1958, and was accomplished in two stages: first, by annexing all of the roadways around the separate blocks and then on the same day annexing the interior portions thereof by referring to them as surrounded tracts of land.

The instant action was commenced by your Petitioner herein, the Village of Lake Bluff, seeking to invalidate the annexation of the Doney property on the ground that the earlier annexation of Forrestal Village was itself invalid. The annexation of the Doney property would clearly fail for lack of continuity with the North Chicago boundaries if the Forrestal Village annexation were invalidated.

The action was begun by filing a Petition for Leave to File a Complaint in Quo Warranto, as is contemplated by the law of Illinois. Your Petitioner had previously requested the Attorney General of Illinois and State's Attorney of Lake County, Illinois, to file such a Complaint, both of whom declined. That action, too, is in accordance with customary procedure. However, the trial Court, without first holding a hearing, ruled on many substantive

issues in this case. During oral argument on the pleadings, your Petitioner attempted to raise and persuade the trial Court of the many important issues in the case and hereinafter discussed. However, the trial Court denied the Petitions and was subsequently affirmed by the Illinois Appellate Court. A copy of its opinion is attached as Appendix A. The Illinois Supreme Court thereafter denied Petitioners' Leave to Appeal. *As a result of these holdings, the various important issues concerning the disenfranchisement of residents of Forrestal Village of their loss of the right to representative government, and the illegal annexation of Forrestal Village contrary to the Statutes of the State of Illinois were all suppressed.*

REASONS FOR GRANTING THE WRIT

I.

BY DENYING THE PETITIONS FOR LEAVE TO FILE A COMPLAINT IN QUO WARRANTO, THE ILLINOIS COURTS PRECLUDED PETITIONER FROM RAISING IMPORTANT QUESTIONS REGARDING THE RIGHT OF RESIDENTS OF THE MILITARY RESERVATION TO VOTE AND TO BE REPRESENTED IN THE MUNICIPAL GOVERNMENT AS WELL AS THE LEGALITY OF THE ANNEXATION.

The foremost issue which has been suppressed by the action of the trial court is that of the countless thousands of residents of Forrestal Village and the entire U.S. Naval Base at Great Lakes, Illinois, have been denied the right to vote and to representation in the North Chicago municipal government. The threshold issue in this case is the validity of the annexation of Forrestal Village. If that annexation falls, the annexation of the Doney property (the original impetus for this suit) must also be declared invalid for want of contiguity. Hence, the Forrestal Village annexation becomes the focal point; and, around this focal point revolves those matters of a Constitutional dimension, those reasons for granting this Petition for a Writ of Certiorari.

At all relevant times, there were two Illinois Statutes in existence which are pertinent to this issue:

Chapter 24, Section 7-36, Illinois Revised Statutes (1957) and Chapter 24, Section 7-1-42, which provide in part as follows:

> 7-36 and 7-1-42. Redistricting after annexation—Joining territory to wards or districts—Election of

aldermen.) If the increase in population resulting from the annexation of any territory to a city under the aldermanic form of government is sufficient to entitle that city to an increase in the number of aldermen, as provided in Section 9-28, the corporate authorities shall redistrict the city in accordance with Sections 9-29 and 9-30. Section 9-28 shall govern as to the hold-over aldermen.

• • •

The number of inhabitants determined by the last national, state or school census in the annexed territory and in the annexing municipality controls in the application of this section.

Chapter 46, Section 3-1, Illinois Revised Statutes (1969), which provides as follows:

3-1. Residence — Citizenship — Age — Presidential elections.) 3-1. Every person having resided in this state one year, in the county 90 days, and in the election district 30 days next preceding any election therein, and who is a citizen of the United States, above the age of 21 years is entitled to vote at such election for all offices and on all propositions. Any military establishment within the boundaries of Illinois as set forth in Article I of the Constitution of Illinois is "in this state" even though the government of the United States may have exclusive jurisdiction over such establishment.

• • •

Assuming that the City of North Chicago intended that the annexation was to be valid, then it should have redistricted Forrestal Village so as to provide representatives in the municicpal government for the annexed property. Moreover, it should have allowed its residents to vote in North Chicago elections. It has done none of these things, contrary to the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution,

North Chicago had a 1970 census of 42,275, a matter which can be judicially noted. The ward boundaries of North Chicago which were proposed exhibits in evidence show North Chicago to consist of 7 wards, the largest of which contains 1,856 inhabitants and the smallest 1,836. There are 12,911 in the 7 wards and there are 32,364 unrepresented individuals. 72.69% of the inhabitants are disenfranchised in the most egregious, flagrant disregard of legal rights to federal military personnel residing on a Federal military installation. That map is reproduced and constitutes the election boundaries for even the 1973 elections. It is unfortunate that reference must be made outside the record, but the Courts below precluded any evidence or testimony into the record. Since it is difficult to read, a sketch is also attached, although not to scale showing the Forrestal Village complex and the Doney property. The election map Ward 7 simply runs down the roadway a mile more or less to the Doney property and completely excludes Forrestal Village.

II.

THE ANNEXATION OF FORRESTAL VILLAGE WAS UNREASONABLE AND CONTRARY TO DUE PROCESS OF LAW SINCE THE CITY OF NORTH CHICAGO MERELY VIEWS THE MILITARY RESERVATION AS A SOURCE OF REVENUE AND PROVIDES IT WITH NO MUNICIPAL SERVICES.

The ostensible motive for annexation of Forrestal Village by North Chicago was an increase in the City's rebate of motor fuel tax proceeds. Under Illinois Statutes, the size of a city's population controls the amount of motor fuel tax rebated to the city. Ill. Rev. Stat. Ch. 120, §424 (1972); the larger the population, the greater the rebate. However, the naval reservation exercises exclusive Federal jurisdiction. Therefore, the City of North Chicago

could not provide many municipal services to Forrestal Village, even if it desired to do so. In sum, annexation of Forrestal Village was accomplished for the sole purpose of increasing city revenues. There never was any bona fide interest to provide even the most elementary of municipal services.

These facts are nearly identical to those in *U.S.* v. *City of Bellevue, Nebraska,* 334 F. 861 (1971). There the City of Bellevue annexed an Air Force Base over which the U.S. exercised exclusive legislative jurisdiction. The District Court found that the City's avowed intent was to increase revenue rather than to expand the City's boundaries in an orderly fashion. The Court held that this annexation was undertaken for an unlawful purpose and was therefore invalid.

It must be emphasized that Petitioners do not claim that because the property annexed was a Naval Base, that the annexation was, ipso facto, invalid. That issue was disposed of in *Howard* v. *Commissioners of the Sinking Fund of the City of Louisville,* 344 U.S. 624, 73 S.Ct. 465, 97 L ed 617 (1953). The annexation of this Naval Base was accomplished for only one purpose, to increase revenue; therefore, it was invalid. *Myles Salt Co.* v. *Board of Commissioners,* 239 U.S. 478, 36 S.Ct. 204 (1916).

In addition to the illegal purpose of the annexation, Petitioner urges consideration of the fact that the annexed property was in no way dependent upon the City of North Chicago for utilities, sewer facilities, or police or fire protection. In fact, North Chicago Police are without authority to exercise their jurisdiction on the Naval Base. Moreover, the annexed land was not needed for any reasonable purpose by the City. In *City of Sugar Creek* v. *Standard Oil Co.,* 163 F.2d 320 (1947), the Court found

that all of these facts existed and that the annexation was therefore invalid. In the case at bar, the trial Court decided the case without a hearing; it thereby prevented Petitioners from raising all of these substantial issues, including, as mentioned above, the resultant deprivation of the right to vote and to representation in City Government.

III.

THE ANNEXATION OF THE U.S. NAVAL RESERVATION WAS ACCOMPLISHED IN VIOLATION OF ILLINOIS STATUTES AND THEREFORE WAS CONTRARY TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

The validity of the annexation is also dependent upon compliance with the Annexation Statute. Ch. 24, Section 7-1-13 et seq. Ill. Rev. Stat. (1969). However, the annexation in the instant case did not comply with Illinois Statutes; more particularly, the essential element of contiguity was lacking. Ch. 24 §7-1-8, Ill. Rev. Stat. (1969).

The City of North Chicago first annexed the streets of Forrestal Village. However, these roadways were not "contiguous". They merely intersected with roadways that traveled into North Chicago. Nonetheless, the City then annexed those areas surrounded by the roadways. This technique, sometimes called "spiderwebs" annexation has been specifically disapproved by the Illinois Supreme Court. *People* v. *Village of Streamwood*, 15 Ill. 2d 595, 155 NE 2d 635 (1959).

To illustrate spiderweb annexations and the procedure followed, 3 diagrams are presented. Diagram A-1 shows a tract of land of many blocks and roadways surrounding it. Usually only one roadway connects to the municipality.

DIAGRAM A-1

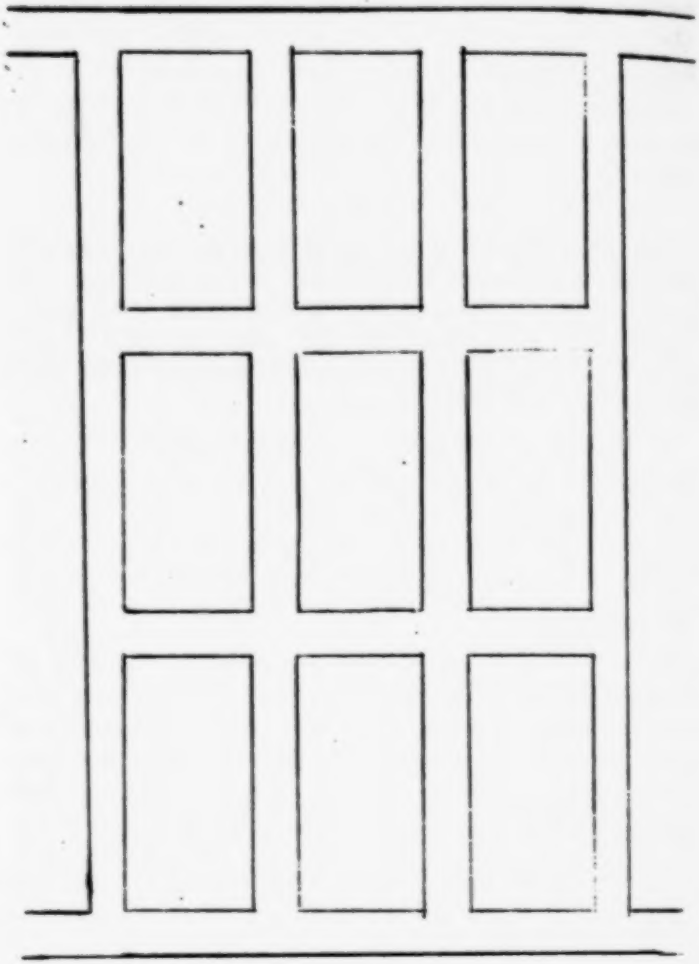
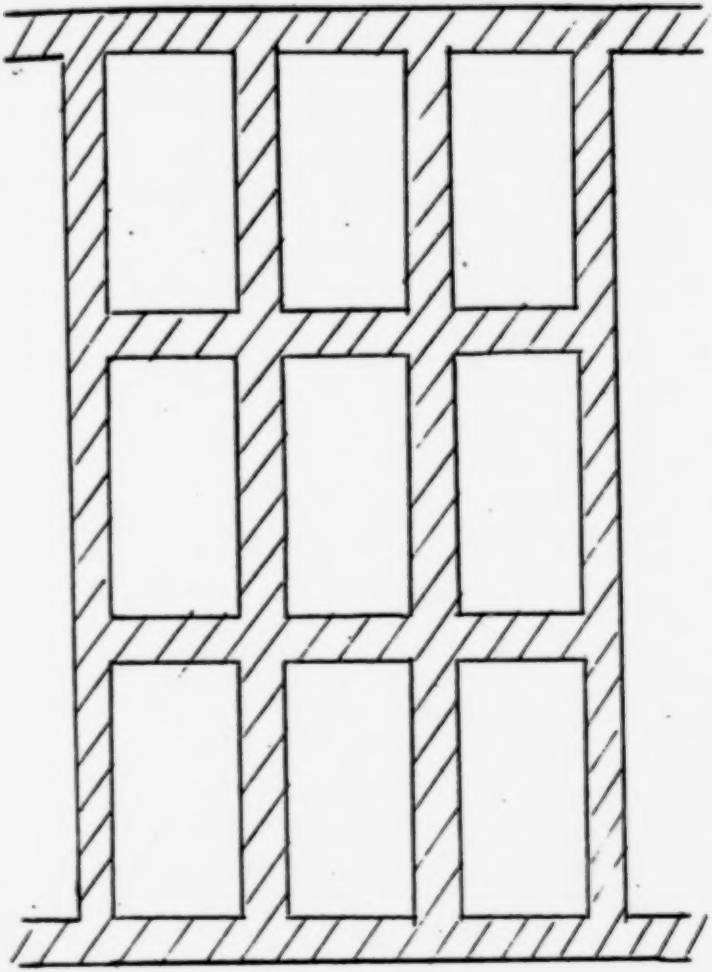


DIAGRAM A-2

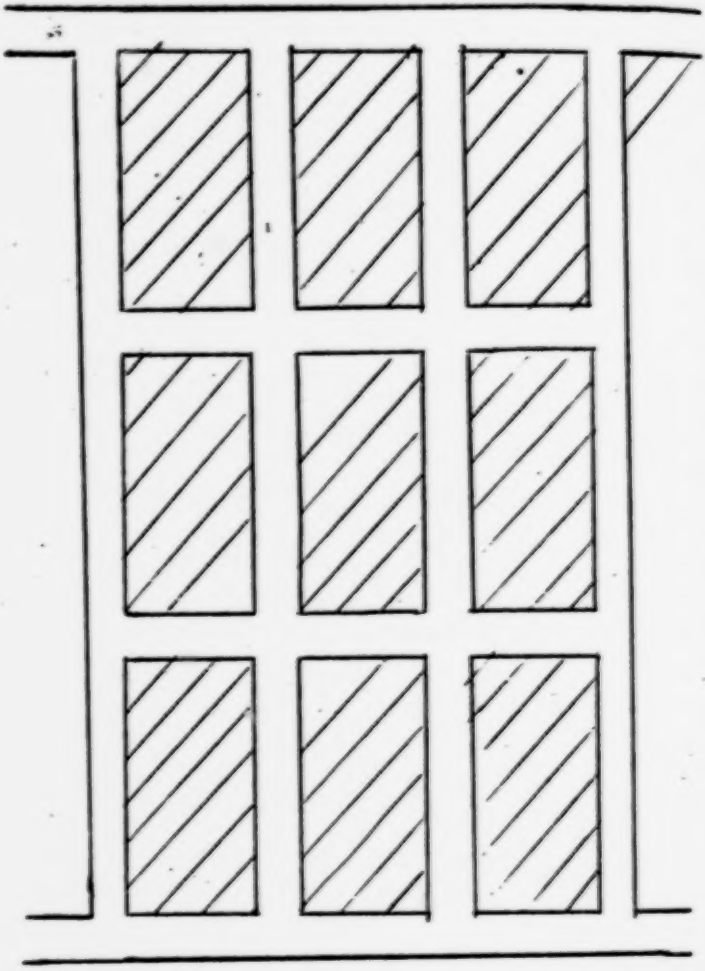
Diagram A-2 shows an annexation by the municipality of the roadways by the crosshatching marks on the road.



BLURRED COPY

DIAGRAM A-3

Diagram A-3 then shows annexation of the inhabitated areas.



The Illinois Annexation Statutes allow inhabited areas to be annexed without their consent only if the area is 60 acres or less and completely surrounded. Chapter 24, Section 7-1-13, which is set forth in the appendix herein.

The City of North Chicago created only a superficial and false surrounding and deprived the inhabitants of due process, of the right of self determination, protected under Illinois Law and the U.S. Constitution.

Interestingly, this same technique was employed by the City of Highwood, Illinois, in its attempt to annex Fort Sheridan, a U.S. Army Base located approximately 8 miles from the City of North Chicago. The United States Government challenged the Highwood annexation and the District Court held the annexation to be void. The case is factually similar to the instant case, and so a copy of the District Court's opinion is attached hereto as Appendix B. Thus, there is presented the anomaly of 2 Federal military bases in the same county in Illinois involved in identical methods of annexation; in this case, the State Court without a trial or hearing approved the annexation, whereas the annexation of the other base was invalidated by a Federal Court, construing the same laws of the State of Illinois.

The rights of military personnel residing in Forrestal Village are, therefore, substantially less than military personnel residing at Fort Sheridan.

It was pointed out in our briefs to the State Courts that the tracts of land involved in this annexation adversely affected other municipalities in Lake County. The State's Attorney of Lake County, Illinois, has now reversed his position as to a part of the annexations challenged, whereas he was a party opponent in this case,

BLURRED COPY

claiming the validity of this annexation, he now admits a portion thereof was invalid.

CONCLUSION

It is for all of these reasons, that Petitioner respectfully urges that a Writ of Certiorari be granted.

Respectfully submitted,

PETER J. NORDIGIAN
STEPHEN H. KATZ
Attorneys for Petitioners

APPENDIX A

OPINION OF THE APPELLATE COURT.
No. 71 129

MR. JUSTICE ABRAHAMSON delivered the opinion of the court:

On August 12, 1968, the City of North Chicago annexed ten acres of land known as the Doney tract. Seventeen months after this annexation, and several months after the Doney property had been rezoned, the Village of Lake Bluff filed a petition in the Circuit Court of Lake County seeking leave to file a complaint in *quo warranto* pursuant to the provisions of the Quo Warranto Act (Ill. Rev. Stat. 1969, ch. 112, par. 9 throught 15). The petition alleged that the annexation of the Doney property by North Chicago was void and illegal and further alleged that it had requested the Attorney General of the State of Illinois and the State's Attorney of Lake County to initiate *quo warranto* proceedings against North Chicago on the grounds that the annexation of the Doney property was void due to lack of contiguity with North Chicago and that those public officials refused that request. The plaintiff further alleged that it is desirous of annexing the Doney property because it is within the school district for the elementary grade school and high school encompassing Lake Bluff, and that it has regulated the Doney property for more than ten years by its official Village plan. The only residents on the Doney property do not want the annexation to North Chicago disturbed and do not want annexation to Lake Bluff.

In response to the plaintiff's petition, the defendants, the First National Bank of Lake Forest, as trustee under a certain trust and thereby owner of record of the Doney property, and North Chicago, each filed an answer denying the plaintiff had any right to file the complaint and asserting that the plaintiff is barred by the statute of

limitations, laches, estoppel and *res judicata*. The State's Attorney of Lake County filed a motion to dismiss the plaintiff's petition. Thereafter, on the 17th day of July, 1970, the trial court entered a final order denying leave to the petitioner to file such a complaint. The trial court held that the suit was barred by the statute of limitations set forth in the Cities and Villages Act (Ill. Rev. Stat. 1969, ch. 24, par. 7-1-46) and that former proceedings between the years 1958 and 1961, with reference to numerous annexations of portions of Forrestal Village to North Chicago were *res judicata* of the issues herein. On the 7th day of August, 1970, plaintiff moved for a reconsideration of the order of dismissal or leave to file an amended petition for leave to file a complaint, which amended petition was permitted to be filed on the 12th day of March, 1970, for the limited purpose of considering it in support of the motion. On the 24th day of February, 1971, an order was entered denying plaintiff's motion for reconsideration or for leave to file the amended petition. This appeal from both orders followed.

Although the plaintiff presents a number of issues to this court, the only ones we need consider and pass upon are those decided by the trial court. Those issues are whether this suit was barred by the statute of limitations and whether the plaintiff can now raise the question of the invalidity of the 1958 annexations of Forrestal Village and portions thereof. In this court, North Chicago has attempted to insert another issue and that is whether the plaintiff, Lake Bluff, is a proper party under the Quo Warranto Act to question the legality of the annexation by North Chicago of the Doney property. That issue is not properly before this court as there is no cross-appeal. The trial court apparently decided that the plaintiff had an interest different than that of the general public so that it could properly file a petition for leave to file a complaint in *quo warranto*, although the Attorney General and the State's Attorney had refused to do so. (*People* v. *Firek*, 5 Ill. 2d 317, 325.) If the court had decided that the plaintiff had no standing to file the petition for leave

to file a *quo warranto* complaint, it would have not considered the statute of limitations and the *res judicata* issue.

Lake Bluff and North Chicago are located near to each other in Lake County, but they are not adjacent. Beginning in 1958, North Chicago started annexing certain properties lying between the two municipalities, primarily being properties of the U. S. Government. These annexations took place on January 13 and 20, April 28 and May 5, all in the year of 1958 and ten years prior to the Doney annexation. The main basis for the plaintiff Village contesting these annexations is that it contends that they were not, when annexed, and are not now, contiguous to any other portion of North Chicago and the contiguity relied upon by North Chicago for annexation of those properties and the Doney property is predicated upon another invalid annexation (of Forrestal Village and a portion of Great Lake, Illinois) because it was accomplished by street and roadway annexations only and without permission of the U. S. Government or the Department of the Navy. North Chicago contends that the Doney property was contiguous to North Chicago as a result of the annexation by North Chicago of property located wholly within the confines of the boundaries of the U. S. Naval Training Station at Great Lakes, known as Forestville or Forrestal Village. It states that those lands were annexed by North Chicago on the dates heretofore mentioned in 1958 and done so properly.

It appears that the State's Attorney of Lake Courty in 1958 filed a complaint in quo warranto against North Chicago, General File No. 67881, in the Circuit Court of Lake County, challenging the annexation of Forrestal Village by North Chicago. On May 19, 1958, shortly after that quo warranto proceeding was filed, North Chicago answered and claimed that the annexations hereinbefore described were valid. On January 30, 1961, the Circuit Court of Lake County ordered the complaint in *quo warranto* filed by the State's Attorney dismissed for want of prosecution. Now, in the present petition, despite the

dismissal of the quo warranto started by the State's Attorney of Lake County in 1958, the plaintiff reasserts the alleged invalidity of those 1958 annexations and contends that the annexation of the Doney property was invalid since North Chicago lacked the requisite contiguity to the Doney property at the time of its annexation on August 12, 1968. The statute of limitations relied upon by the trial court as a bar to the filing of the present proceedings is contained in the Cities and Villages Act (Ill. Rev. Stat. 1969, ch. 24, par. 7-1-46).

> "Neither the People of the State of Illinois nor any person, firm or corporation, public or private, nor any association of persons shall commence an action contesting either directly or indirectly the annexation of any territory to a municipality unless initiated within one year after the date such annexation becomes final or within one year of the effective date of this amendatory Act of 1965 whichever date occurs latest. This amendatory Act of 1965 shall apply to annexations made prior to the effective date of the Act as well as those made on or after the effective date. Where a limitation of a shorter period is prescribed by statute such shorter limitation applies and the limitation set forth in this section shall not apply to any annexation where the judge, body or officer annexing the territory did not at the time of such annexation have jurisdiction of the subject matter."

The plaintiff contends that this statute is not a bar to these proceedings because the statute provides specifically that it shall not apply to any annexation where the annexing body did not have jurisdiction of the subject matter at the time of such annexation. Plaintiff states that the lack of contiguity is jurisdictional, and that since there was a complete lack of jurisdiction to make the annexations of Forrestal Village because the consent of the Federal Government was not secured, and for other reasons, any annexations accomplished by North Chicago of U. S. Government territory is void *ab initio*. It does not appear

that the U. S. Government has ever objected to the annexations of its property.

As far as the argument concerning contiguity is concorned, this court was presented with a similar situation in the case of *In re Annexation to City of Loves Park*, 89 Ill. App. 2d 284 (Abstract). There, the City of Loves Park passed an ordinance on October 10, 1966, annexing certain property, and a week later filed its petition for annexation pursuant to the Cities and Villages Act (Ill. Rev. Stat. 1965, ch. 24, par. 7-1-1 through 7-1-10), praying for a referendum of electors of the area. Soon thereafter, the North Park Fire Protection District filed objections to the petition and ordinance, contending that the territory described in the ordinance was not contiguous to the City of Loves Park. After a hearing, the court held that the petition and ordinance were valid and ordered that the question of annexation be submitted to the electors. Thereafter, a majority of the electors voted in favor of the annexation and an order of annexation was entered by the court. From those two 1966 orders the Fire District appealed. Chronologically, Loves Park had passed four ordinances annexing four separate pieces of land in late 1959 and early 1960, and *quo warranto* proceedings were filed soon thereafter challenging the validity of the annexation of three of these parcels. After hearing, on July 22, 1960, the trial court entered final judgment, declaring all four parcels to have been legally and validly annexed. Later, a *quo warranto* proceeding was brought unsuccessfully to oust Loves Park from exercising authority over certain parcels of land which included the four parcels previously mentioned. On appeal, in *People* v. *City of Loves Park*, 59 Ill. App. 2d 297 (Abstract) this court held that the judgment of July 22, 1960, as to those four parcels was *res judicata* as to the validity of their annexation, and stated:

> "If lack of contiguity as to the Count 1 territory was a defense in Cause No. 73201 (the prior *quo warranto* proceedings), it should have been presented in

that action. Under the circumstances, we think the trial court was correct in holding that the judgment in the prior action is *res judicata* as to the question of the validity of the annexation of the territory described in Counts 1, 2, 3, and 4 of the instant complaint. See *People* v. *Kidd,* 398 Ill. 405."

In appealing the 1966 orders, the Fire District contended that despite our decision in *People* v. *Loves Park,* supra, that the validity of the annexation of the four parcels was *res judicata,* the lack of contiguity of those parcels is material to a determination of the contiguity of the land annexed on October 10, 1966, by Loves Park. In disposing of that contention, we said:

"We will not set aside the previous annexations in order to render the territory sought to be annexed in this proceeding non-contiguous, People v. City of Loves Park, supra, nor will we invalidate the present annexation because of some fear that some future annexations may be predicated upon it. The validity of future annexations will be passed upon as they are presented to the Court."

We thereupon concluded that the trial court was correct in overruling the objections of the Fire District, and affirmed the judgment of the trial court.

The factual situation herein differs somewhat from that involved in the annexations to Loves Park because the original *quo warranto* proceedings, concerning the annexation of four parcels to Loves Park in 1959 and early 1960, terminated in a judgment holding that those annexations were legal and valid. In our case, it appears that an original quo warranto proceeding filed by the State's Attorney of Lake County with reference to the properties annexed in 1958 terminated on January 30, 1961, by a judgment of the trial court dismissing said quo warranto proceedings for want of prosecution.

The plaintiff does not seek to justify a lapse of 17 months for attacking the annexation of the Doney prop-

erty, or the lapse of more than 10 years in questioning the annexations of the U.S. Government properties. Based on the language used in *In re Annexation to City of Loves Park*, supra, and in *People* v. *City of Loves Park*, supra, we conclude that the trial court had jurisdiction of the subject matter and properly held that this suit was barred by the statute of limitations. (Ill. Rev. Stat. 1969, ch. 24; par. 7-1-46.)

Another contention of the plaintiff is that the defendants should not have been allowed to file answers to the plaintiff's petition for leave to file a *quo warranto* complaint but should only be permitted to answer once the court had allowed leave to file it. Plaintiff also states that an answer setting forth the affirmative defenses of statutes of limitations, laches, estoppel and *res judicata* can only be filed after the *quo warranto* complaint has been allowed to be filed. However, in *People ex rel. Palmatier* v. *Tighe*, 11 Ill. App. 2d 1, the court said at page 9:

> The writ of quo warranto is not a writ of right but lies in the sound discretion of the court, which may consider all the circumstances and conditions, the motives of the petitioner in having the proceeding instituted, and whether the public interest will be served or damagd by the writ. (People v. Jones, 308 Ill. 246, 249.) If the facts shown by respondent in his answer to the rule are disputed or if new and doubtful questions of law are presented, leave should be granted to file the information. If, however, the facts are not disputed and if the questions of law may receive as full and careful consideration upon the application for leave to file as upon a final hearing, leave to file should not be granted. (People 1. France, 314 Ill. 51, 54.)"

It appears that the material facts herein are not in dispute and that the court did and could give full consideration to the question of the application of the statute of limitations and *res judicata* as raised in the answers to the petition for leave to file a *quo warranto* complaint.

Therefore, it was not necessary to grant the leave to file a complaint and postpone consideration of the statute of limitations and *res judicata* until after answers to the complaint had been filed by the defendants.

Another contention of the plaintiff is that the trial court erred in refusing to permit plaintiff to file an amended petition or for reconsideration of the order entered July 17, 1970, denying leave to file the oiginal petition. We have examined the amended petition which the trial court permitted to be filed for the limited purpose of considering the motion and have determined that no new facts, which are material, were presented to the trial court in the amended petition which would require a different result in the application of the law pertaining to the statute of limitations and *res judicata*. The trial court did not err or abuse its discretion in refusing to allow either the amended petition to be filed or in refusing to reconsider the order denying the original petition.

Both of the orders of the trial court involved in this appeal are affirmed.

JUDGMENT AFFIRMED.

SEIDENFELD, *P.J.* and GUILD, *J.*, concur.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

North Shore Gas Company v. United States of America	70 C 3104
United States V. America v. City of Highwood	71 C 1416 (Consolidated)

Memorandum Opinion and Order of the District Court

The City of Highwood, Illinois (hereinafter "the city") purported to annex the greater part of the federal reservation known as Fort Sheridan in 1965. In 1969, the city imposed a tax on the privilege of furnishing utilities for use or consumption within its corporate limits. The city sued the North Shore Gas Company (hereinafter "North Shore") in the Circuit Court of Lake County (70-MR-90) for a declaratory judgment that North Shore is liable for the municipal tax on its sales of gas to the United States for use at Fort Sheridan. North Shore then brought suit against the United States in this Court (70 C 3104), claiming that Ill. Rev. Stat. ch. 111⅔, §36 allows utilities to charge their customers an amount equal to the municipal utilities tax. The government then filed suit here against the city (71 C 1416) seeking a declaratory judgment that the annexation was invalid and that the tax was therefore inapplicable to the furnishing of utilities to Fort Sheridan. On the motion of North Shore, the two cases before this Court were consolidated. The Lake County suit has been stayed by the Circuit Court pending the disposition of these consolidated actions.

The government has moved for summary judgment in both cases. North Shore does not oppose the motion. The controversy is a legal one. There is no genuine issue as to any material fact. The city has admitted the adoption of the annexation ordinances in its answer; it has admitted the accuracy of the government's description of the land involved in its brief in opposition to the instant motion. All other issues which the city seeks to characterize as factual are actually legal in nature.

The validity of the purported annexation is the determinative issue in all of the suits between these parties. The city asserts that the doctrine of laches and the one-year limitations period contained in Ill. Rev. Stat. ch. 24, §7-1-46 bar consideration of this issue. Its argument has no merit. It has long been established that the United States is not bound by state statutes of limitations; nor is it subject to the defense of laches in enforcing its rights. *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940). We turn therefore to the basic question of whether or not the subject annexation was a lawful one.

No city or village in Illinois may validly annex territory without statutory authority. *People ex rel. Universal Oil Prods. Co.* v. *Village of Lyons*, 400 Ill. 82, 85, 79 N.E. 2d 33 (1948). The apparent intent of the annexation act, construed as a whole, is that territory cannot be annexed against the will of its owners and inhabitants, with certain specified exceptions. *Krupp* v. *Taylor*, 20 Ill. App.2d 282, 286, 156 N.E.2d 13 (1959). The city has attempted to use two of those exceptions in conjunction with one another to obtain authority over Fort Sheridan without the consent of the United States.

Section 7-1-10, Ill. Rev. Stat. ch. 24, provides in pertinent part:

> "Any municipality by ordinance may annex any territory contiguous to it even though the annexed territory is dedicated or used for street or highway purposes under the jurisdiction of the Department of

> Public Works and Buildings of the State of Illinois, or a county or township highway department if no part of the annexed territory is within any other municipality. . . ."

Under the authority of this section, the city enacted Ordinance 65-0-3 purporting to annex certain streets and roads within the boundaries of Fort Sheridan. This created a "web" of territory over which the city claimed control. On the same day, Ordinance 65-0-4 was adopted, pursuant to Ill. Rev. Stat. ch. 24, §7-1-13, providing in part that:

> "Whenever any unincorporated territory containing 60 acres or less, is wholly bounded by (a) one or more municipalities, (b) one or more municipalities and a river or lake, (c) one or more municipalities and the Illinois State boundary, or (d) one or more municipalities and property owned by the State of Illinois, except highway right-of-way owned in fee by the State, that territory may be annexed by any municipality by which it is bounded in whole or in part, by the passage of an ordinance to that effect after notice is given as provided in this Section. . . ."

In this way, the city attempted to obtain authority over the land occupying the space between the roads covered by Ordinance 65-0-3.

While it is clever, the above-described scheme is not valid. A basic requirement of §7-1-10 is that the street or highway property to be annexed must be contiguous to the annexing municipality. The Illinois courts have repeatedly held that "contiguous" means that the roadways must be adjacent and parallel to the existing municipal boundaries. *People ex rel. Adamowski* v. *Village of Streamwood*, 15 Ill.2d 595, 601, 155 N.E.2d 635 (1959); *People ex rel. Coojar Realty Corp.* v. *Village of Burr Ridge*, 81 Ill.App.2d 203, 225 N.E.2d 39 (1967); *People ex rel. Nash* v. *City of Loves Park*, 59 Ill.App.2d 297, 207 N.E.2d 490 (1965) (abstract only). The streets and roads within Fort Sheridan are not adjacent and parallel to

the city's existing limits. Ordinance 65-0-3 is therefore invalid. Without the annexation of the roadways within Fort Sheridan, the land between them is not "surrounded" by the municipality as required by §7-1-13. Thus, Ordinance 65-0-4 is also void.

Accordingly, judgment will be entered in case number 70 C 3104 against North Shore; and in case number 71 C 1416, judgment will be entered against the City of Highwood. Pursuant to Rule 54(c), Fed.R.Civ.P., the City of Highwood and its agents are enjoined from collecting or attempting to collect the municipal utilities tax from companies, including North Shore, based upon the utilities they furnish to Fort Sheridan. Attorneys for the United States are directed to present an appropriate draft order within 15 days.

It Is So Ordered.

/s/ R. W. McLaren
United States District Judge

Dated: June 14, 1972

APPENDIX C

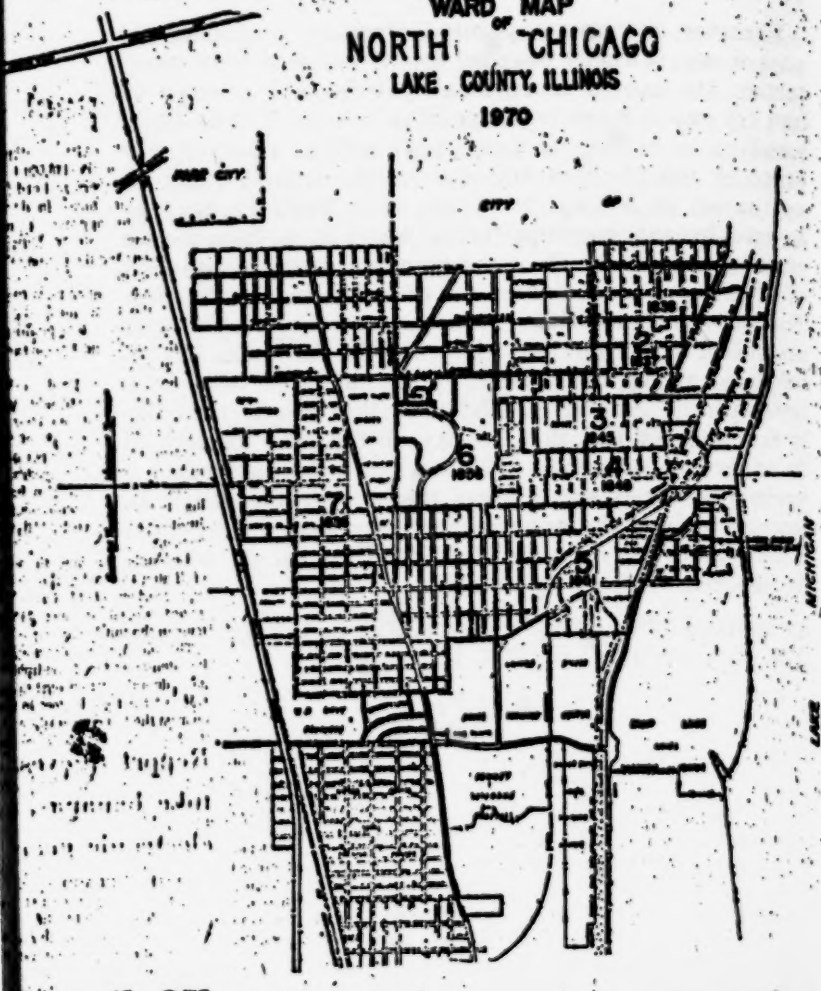
§ 7-1-13. Surrounded or nearly surrounded territory

Whenever any unincorporated territory containing 60 acres or less, is wholly bounded by (a) one or more municipalities, (b) one or more municipalities and a river or lake, (c) one or more municipalities and the Illinois State boundary, or (d) one or more municipalities and property owned by the State of Illinois, except highway right-of-way owned in fee by the State, that territory may be annexed by any municipality by which it is bounded in whole or in part, by the passage of an ordinance to that effect after notice is given as provided in this Section. The corporate authorities shall cause notice, stating that annexation of the territory described in the notice is contemplated under this Section, to be published once, in a newspaper of general circulation within the territory to be annexed, not less than 10 days before the passage of the annexation ordinance. The ordinance shall describe the territory annexed and a copy thereof together with an accurate map of the annexed territory shall be recorded in the office of the recorder of deeds of the county wherein the annexed territory is situated.

As amended 1963, July 31, Laws 1963, p. 2157, § 1; 1967, Aug. 26, Laws 1967, p. 3333, § 1.

APPENDIX D

Appendix D:

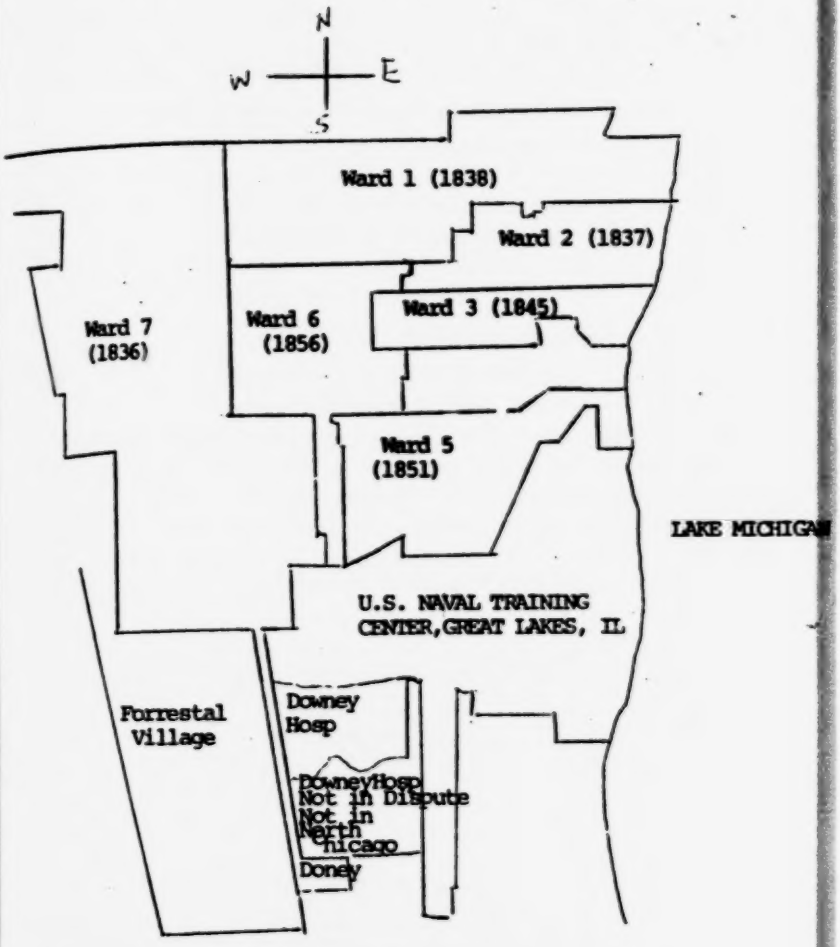


Council OKs new map

Reapportioned aldermanic wards as approved unanimously by the North Ch
City Council Monday night. The new map moves none of the present N
men out of his ward, and retains the geographical lop-sidedness between
2nd Wards. Figures below ward designations indicate the total number of
women and children residing in the ward, as tallied by the city itself in
sense of final U.S. Census Bureau statistics.

PY PRINTED CLOSE TO EDGE COPY BOUND TOO CL

APPENDIX E



The small tract of land labeled Doney is connected to the 7th Ward by a roadway only which runs east of Forrestal Village and West of Downey Hospital.

OSE IN CENTER

POOR COPY

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of September in the year of our Lord, one thousand nine hundred and seventy-two, within and for the State of Illinois.

Present: ROBERT C. UNDERWOOD, Chief Justice
Justice WALTER .V. SCHAEFER
Justice DANIEL P. WARD
Justice JOSEPH H. GOLDENHERSH
Justice THOMAS E. KLUCZYNSKI
Justice CHARLES H. DAVIS
Justice HOWARD C. RYAN

WILLIAM J. SCOTT, Attorney General
ROBERT G. MILEY, Marshal
Attest: JUSTIN TAFT, Clerk

BE IT REMEMBERED, that, to-wit: on the 28th day of September, A.D. 1972, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

People ex rel. Village of Lake Bluff, a Municipal Corporation of the State of Illinois and the Village of Lake Bluff,
Petitioners
No. 45270 vs.
City of North Chicago, a Municipal Corporation of the State of Illinois, The First National bank of Lake Forest, as Trustee under Trust #2867, Henry E. Doney and Helen U. Doney,
Respondents

Board of Education, School District No. 65, Lake County, Illinois,
vs.
City of North Chicago, a Municipal Corporation of the State of Illinois, The First National Bank of Lake Forest, as Trustee under Trust #2867, Henry E. Doney and Helen U. Doney.

Petition for Leave to Appeal from Appellate Court Second District
71-129

And now, on this day, the Court having duly considered the petition for leave to appeal herein and being now

fully advised of and concerning the premises, doth overrule the prayer of the petition and denies leave to appeal herein.

And it is further considered by the Court that the said respondents recover of and from the said petitioners costs by them in this behalf expended, to be taxed in due course of law.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereonto subscribed my name and affixed the Seal of said Court this 20th day of October, A.D. 1972.

/s/ Justin Taft

Clerk,
Supreme Court of the State of Illinois.

(SEAL)

No. 72-954

FILED
FEB 5 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

PEOPLE OF THE STATE OF ILLINOIS EX REL. VILLAGE OF LAKE BLUFF, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, AND THE VILLAGE OF LAKE BLUFF,

Petitioners,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

BOARD OF EDUCATION, SCHOOL DISTRICT NO. 65, LAKE COUNTY, ILLINOIS,

Intervenors,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

JOINT OPPOSITION OF RESPONDENTS TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME.

ANTHONY BRADLEY EBEN
230 West Monroe Street
Chicago, Illinois 60606
Attorney for Respondent
First National Bank of Lake Forest,
As Trustee

HOWARD R. SLATER
33 North LaSalle Street
Chicago, Illinois 60602
Attorney for Respondent
City of North Chicago

The Scheffer Press, Inc.—(312) 263-6050

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-954

PEOPLE OF THE STATE OF ILLINOIS EX REL. VILLAGE OF LAKE BLUFF, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, AND THE VILLAGE OF LAKE BLUFF,

Petitioners,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

BOARD OF EDUCATION, SCHOOL DISTRICT NO. 65, LAKE COUNTY, ILLINOIS,

Intervenors,

vs.

CITY OF NORTH CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS, THE FIRST NATIONAL BANK OF LAKE FOREST, AS TRUSTEE UNDER TRUST #2867, HENRY E. DONEY AND HELEN U. DONEY,

Respondents.

JOINT OPPOSITION OF RESPONDENTS TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME.

Respondents, City of North Chicago and the First National Bank of Lake Forest, as Trustee Under Trust #2867, Henry E. Doney and Helen U. Doney, represent to the Court as follows:

1. Petitioners heretofore petitioned the Illinois Supreme Court pursuant to Rule 315 of that Court (S.H.A. ch. 110A, §315) for leave to appeal from the decision entered on April 3, 1972 in the Appellate Court of Illinois, Second District, finally disposing of this litigation adversely to them. The decision is attached to the Petition herein as "Appendix A".

2. The petition for leave to appeal was denied by final order of the Illinois Supreme Court "had and entered of record" on September 28, 1972 as shown by the certification dated October 20, 1972 of the Clerk of that Court to that effect. The certification is also part of petitioners' Appendix.

3. After the entry of the final order of the Illinois Supreme Court, its mandate transmitting that order to the lower court automatically issued on October 20, 1972 under the provision of Rule 368 of that Court (S.H.A. ch. 110A, §368) providing insofar as here pertinent:

> "The clerk of the reviewing court shall transmit to the circuit court the mandate of the reviewing court, with notice to the parties, *not earlier than 21 days after the entry of judgment* unless the court orders otherwise." (Emphasis added.)

4. Apart from the certification referred to above, Rule 368 of the Illinois Supreme Court makes clear on its face that as applicable to this case the order of the Illinois Supreme Court refusing review of the Appellate Court decision necessarily was entered on September 28, 1972. The time for filing a petition for a writ of certiorari began to run from the date of that refusal. *American Railway Express Co.* v. *Levee*, 263 U.S. 19, 20-21 (1923).

5. In addition, 28 U.S.C. §2101(c) applicable to the filing of the Petition herein provides that:

> "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days *after the entry of such judgment or decree.* A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days." (Emphasis added.)

6. The Petition herein was filed on January 3, 1973, more than ninety days since the entry of the Illinois Supreme Court's final order denying petitioners leave to appeal, as aforesaid, and the period for applying for a writ of certiorari has not been extended within the ninety days by a Justice of this Court (15 U.S.C.A. §2101(c) and Rules 22 and 34(2) of this Court).

7. Apart from the fact that the Petition herein should be denied summarily because filed out of time, there are many other reasons made evident in the Petition and Appendix thereto showing it to be completely devoid of merit. Among these are the fact that the parties whose federal constitutional rights are alleged in the Questions Presented portion of the Petition to have been infringed were not ever parties in the proceedings at any time, are not represented herein by petitioners, and have never sought to assert such infringement. Further, petitioners have not filed any record here showing that the decision of the Appellate Court of Illinois turned on any federal question. Appendix A shows the contrary. In the unlikely event this Court decides that the Petition has been timely

filed, respondents ask leave to further answer in opposition in order to avoid an improvident issuance of the writ.

It appears that petitioners' application for a writ of certiorari is out of time and should be denied.

Respectfully submitted,

ANTHONY BRADLEY EBEN
230 West Monroe Street
Chicago, Illinois 60606
Attorney for Respondent
First National Bank of Lake Forest,
As Trustee

HOWARD R. SLATER
33 North LaSalle Street
Chicago, Illinois 60602
Attorney for Respondent
City of North Chicago